

Limiting CenturyTel's liability for the good faith release of information is proper as a matter of public policy and makes sense. First and foremost, CenturyTel is the Party releasing the information to "emergency response agencies," in response to a call placed to an E911 service (*i.e.*, this is an emergency situation requiring a quick response). Additionally, Charter bears sole responsibility for the content of information in the DBMS database that could potentially be released by CenturyTel.³⁰⁸ Finally, Missouri law does not provide a carrier such as CenturyTel any form of statutory immunity from liability in a situation such as is presented.

In this situation, CenturyTel is releasing information to an *emergency response agency responding to an E911 call*. Given the context of such a release (*i.e.*, an emergency involving public health, safety and welfare), limiting CenturyTel's liability for civil damages for such a release *so long as CenturyTel acts in good faith*, is a reasonable solution and is in the public interest. In situations where CenturyTel is releasing information as a result of an E911 call, quick action is going to be required. Moreover, this is not a situation in which the information is being released to, for example, the local newspaper reporter or town gossip. The information is being released to an emergency response agency to assist that agency's response to an emergency.

With regard to Charter's contention that the provision should apply to both Parties, Charter fails to explain in the Joint Statement why it is entitled to a similar limitation. As discussed above, there are clear reasons why CenturyTel requests such a limitation, including that it is *CenturyTel* that manages the DBMS and relays the subscriber

³⁰⁸ Agreement, Article VII, § 4.5.1 ("Once E911 trunking has been established and tested between **CLEC's end Office and appropriate Selective Routers, **CLEC or its representatives shall be responsible for providing **CLEC's End User 911 Records to CenturyTel for inclusion in CenturyTel's DBMS on a timely basis.")

information to the public agency. Charter does not manage the DBMS or relay this information to the public agency, therefore the need for such limitation is not present.

Decision

The Arbitrator finds this issue in favor of CenturyTel.

38. Should CenturyTel be permitted to limit its liability for so-called "nonregulated" telephone services in connection with 911 services – even where that term is not defined under the Agreement?³⁰⁹

Findings of Fact

The Parties agreed to address this issue in briefing only; accordingly, no testimony was filed by either Party, and the Arbitrator makes no findings of fact.

Conclusions of Law and Discussion

Incorporated by reference is the discussion under Issue 35 and Issue 36 regarding 911 liability. Thus, the same decision with respect to 911 liability on those issues will apply here.

Specifically, the Arbitrator found that "as a matter of public policy," parties to interconnection agreements should not be permitted to escape liability for "intentional, willful or gross negligent conduct."³¹⁰ Generally, in arbitrating the disputed issues, the Arbitrator is charged with the task of ensuring that each Party's respective obligations under the Agreement are unambiguous. For that reason, the Arbitrator is reluctant to

³⁰⁹ CenturyTel's phrasing of the issue is: "Should CenturyTel be liable for incorrectly routed 911 service, when such incorrect routing is not CenturyTel's fault?"

³¹⁰ *SBC Missouri Arbitration*, Commission Order at 56.

accept CenturyTel's proposal because it has failed to carry its burden of proof with respect to the purpose, or intent, of its language.

Troubling is the meaning of the term "nonregulated" telephone services. CenturyTel has not defined that term in its proposed language, nor has CenturyTel offered any meaningful explanation of how any liability with respect to the provision of these so-called "nonregulated" telephone services would arise in the first place. Put simply, the Arbitrator does not see the need, or wisdom in adopting this language.

This approach is consistent with the basic purpose of an interconnection agreement, which, pursuant to Sections 251 and 252 of the Telecommunications Act, is intended to definitively establish the rights and obligations of the Parties. In other words, the Agreement must be clear and unambiguous to accomplish the purposes of those Sections 251 and 252. In contrast, if CenturyTel's proposed language were adopted, the Agreement would include ambiguous terminology that would create uncertainty as to Charter's obligations on a going-forward basis. Ambiguity with respect to Charter's obligations to CenturyTel, especially as it pertains to a limitation on CenturyTel's liability in connection with certain vital 911 services, should be avoided. Doing so will likely lead to fewer disputes between the parties.

Decision

The Arbitrator finds this issue in favor of Charter.

40. Should the Pricing Article include Service Order rates and terms?

Findings of Fact

91. CenturyTel requests the inclusion of the rates in the Agreement, and provided expert opinion that the rates contained in the CenturyTel draft of the Agreement comply with the costing methodology standards applicable under 47 U.S.C. § 251.³¹¹

Conclusions of Law and Discussion

The Arbitrator has already determined that the Agreement should allow both Parties to assess a non-recurring charge for a request to port a telephone number. This issue is framed as: "Should the Pricing Article include Service Order rates and terms?" Based upon the decision that the service orders for porting requests are appropriate, the Agreement should also include service order rates and terms. Accordingly, the Agreement should include the rates and terms set forth by CenturyTel for Article II, § 2.70.

Decision

The Arbitrator finds this issue in favor of CenturyTel.

41. How should specific Tariffs be incorporated into the Agreement?

For the reasons stated under Issue 3, the Arbitrator finds this issue in favor of Charter.

³¹¹ Ex. 15, p. 13, l. 4-7; Ex. 17, p. 11, l. 10-14.